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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/372,646      | 08/12/99    | JURGOVAN             | 914-1372DIV1        |

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IM62/1030

EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/30/00



Due 1/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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| RECEIVED/DOCKETING<br>ROTHWELL FIGG ERNST & MANBECK |
| OCT 31 2000   |
| REFERRED TO <u>BCW</u>                              |
| FILE NO. <u>914-1372-DIV2</u>                       |
| OK TO FILE  |

# Office Action Summary

Application No.  
09/372,646

Applicant(s)  
Jurgovan et al

Examiner  
Drew Becker

Group Art Unit  
1761



☒ Responsive to communication(s) filed on Oct 10, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration filed on October 10, 2000 under 37 CFR 1.131 is sufficient to overcome the Ramsey et al reference.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 1 and 17 recite "In combination:". It is not clear whether a package is being claimed or a product.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), a rib and groove zipper as exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff), walls of laminate materials (column 4, lines 4-23), a bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 are preferred methods of use of the claimed package and therefore are not given weight. McClintock et al teach a package which contains potato chips (column 2, line 14). It would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64) and since heat seals were commonly used for top seals as evidenced by Thompson et al [Pat. No. 5,224,779] (Figure 5, 28).

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7. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al. Christoff teaches the above mentioned concepts. Christoff does not teach pinch grip forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers and since Thompson et al teach that this is a common range of opening force for packages (column 3, line 4).
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tomic [Pat. No. 6,131,248] and Johnson [Pat. No. 6,065,872] teach packages having zipper located below top seals.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Drew Becker

October 25, 2000

  
KEITH HENDRICKS  
PRIMARY EXAMINER